Supreme Court, U.S.
F I L E D
MAR 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

87-1626

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALEXANDER RANCH, INC.

and

WENDYLOU RANCH, INC.,

Petitioners

v.

CENTRAL APPRAISAL DISTRICT OF ERATH COUNTY, TEXAS, ERATH COUNTY APPRAISAL REVIEW BOARD, and JAMES BACCUS,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

Richard D. Coan

COAN & SHELL, P.C.
188 N. Graham Street
Stephenville, Texas 76401
817/965-5066

ATTORNEY FOR PETITIONERS

QUESTION PRESENTED

Whether the denial of an open-space agricultural tax exemption, pursuant to TEX.TAX CODE §23.56(3) (Vernon, 1982), to lands owned by Petitioners, who are Texas corporations, on the basis of classification of alien ownership, is violative of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution?

LIST OF PARTIES

PETITIONERS: ALEXANDER RANCH, INC. and WENDYLOU RANCH, INC.[1]

RESPONDENTS: CENTRAL APPRAISAL DISTRICT OF ERATH COUNTY, TEXAS, ERATH COUNTY APPRAISAL REVIEW BOARD, and JAMES BACCUS

---

[1]Petitioners are separate non-related corporations:
Petitioner, Alexander Ranch, Inc., is wholly owned by Montague Holding, Ltd., and owns 50% of the stock of Barbee-Pair, Inc., a Texas corporation.
Petitioner, Wendylou Ranch, Inc., is wholly owned by Elliott Holdings, Ltd., and owns 50% of the stock of Barbee-Pair, Inc., a Texas corporation.

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OPINIONS BELOW

The decision of the Supreme Court of Texas is printed in Appendix A hereto, infra, page 1. The denial of Petitioners' Motion for Rehearing is printed in Appendix A hereto, infra, page 2. The opinion of the Court of Appeals for the Eleventh Supreme Judicial District of Texas, reported at 733 S.W.2d 303, (Tex.App. 1987, writ ref'd n.r.e.), is printed in Appendix A hereto, infra, page 3-22. The Judgment of the 226th District Court of Erath County, Texas, is

printed in Appendix A hereto, infra, page 23-25.

JURISDICTION

The judgment of the Supreme Court of Texas (Appendix A, infra, page 1) was entered on October 28, 1987. A timely Motion for Rehearing was denied on December 16, 1987 (Appendix A, infra, page 2). The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1257(3) (1970).

STATUTES INVOLVED

TEX.CONST.art.VIII,§1-d-1(a)

Open-Space Land

> To promote the preservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes on the basis of its productive capacity and may provide by general law for taxation of open-space land devoted to timber production on the basis of its productive capacity. The legislature by general law may provide eligibility limitations under this

section and may impose sanctions in furtherance of the taxation policy of this section.

TEX.TAX CODE ANN. §23.52

Appraisal of Qualified Agricultural Land

(a) The appraised value of qualified open-space land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. The appraised value so determined may not exceed the market value as determined by other appraisal methods.

(b) The chief appraiser shall determine the appraised value according to this subchapter and, when requested by a landowner, the appraised value according to Subchapter C of this chapter of each category of open-space land owned by that landowner and shall make each value and the market value according to the preceding year's appraisal roll available to a person seeking to apply for appraisal as provided by this subchapter or as provided by Subchapter C of this chapter.

(c) The chief appraiser may not change the appraised value of a parcel of open-space land

unless the owner has applied for and the land has qualified for appraisal as provided by this subchapter or by Subchapter C of this chapter or unless the change is made as a result of a reappraisal.

(d) The State Property Tax Board by rule shall develop and distribute to each appraisal office appraisal manuals setting forth this method of appraising qualified open-space land, and each appraisal office shall use the appraisal manuals in appraising qualified open-space land. The State Property Tax Board by rule shall develop and the appraisal office shall enforce procedures to verify that land meets the conditions contained in Subdivision (1) of Section 23.51 of this code. The rules, before taking effect, must be approved by a majority vote of a committee comprised of the following officials or their designees: the governor, the comptroller, the attorney general, the agriculture commissioner, and the commissioner of the General Land Office.

(e) For the purposes of Section 23.55 of this code, the chief appraiser also shall determine the market value of qualified open-space land and shall record both the market value and the appraised value in the appraisal records.

(f) The appraisal of minerals or subsurface rights to minerals is not within the provisions of this subchapter.

TEX.TAX CODE ANN. §23.56

Land Ineligible for Appraisal as Open-Space Land

Land is not eligible for appraisal as provided by this subchapter if: . . .,

(3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity.

TEX.PROP.CODE ANN. §5.005

An alien has the same real and personal property rights as a United States citizen.

U.S.CONST.amend.XIV,§1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

> wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is an action initiated by Petitioners challenging Respondents' assertion that Petitioners did not qualify for the open-space exemption as defined by TEX.TAX CODE §23.52 and which action sought to have TEX.TAX CODE §23.56(3), classifying land ownership, declared unconstitutional.

Petitioners are owners of real property situated in Erath County, Texas, and for which Petitioners duly applied to Respondents for an open-space agricultural usage exemption under Texas ad

valorem taxes. Petitioners are each Texas corporations in good standing, and are required by federal law to register their ownership of land because non-resident aliens own a majority interest in each of the two corporations. Except for the requirement of TEX.TAX CODE §23.56(3), Petitioners' property meets all the requirements for the exemption. Petitioners are not non-resident aliens nor foreign corporations.

Respondent(s) have stipulated all other requirements which are not disputed. Respondents denied the exemption to Petitioners solely on the basis set forth in TEX.TAX CODE §23.56(3). The case was submitted to the District Court without a jury, on briefs and stipulations of evidence. The Trial Court found that Petitioners' land did not qualify as

open-space agricultural land for tax exemption purposes and that TEX.TAX CODE §23.56(3) was constitutional (Appendix A, infra, page 24). Petitioners appealed the decision of the District Court to the Court of Appeals for the Eleventh Supreme Judicial District of Texas, at Eastland, Texas. The Court of Appeals affirmed the judgment of the District Court (Appendix A, infra, page 3). Petitioners filed an application for writ of error with the Supreme Court of Texas, which refused the application with the notation "no reversible error," and subsequently denied Petitioners' motion for rehearing (Appendix A, infra, pages 1-2).

Petitioners raised their federal question as to the constitutionality of TEX.TAX CODE §23.56(3) in their Original Petition in the District Court. The

judgment of the District Court found that TEX.TAX CODE §23.56(3) was constitutional (Appendix A, infra, page 24). The Court of Appeals for the Eleventh Supreme Judicial District of Texas held that the classification contained in TEX.TAX CODE §23.56(3) did not violate the Equal Protection Clause (Appendix A, infra, page 3).

REASONS FOR GRANTING WRIT

Petitioners are domestic Texas corporations who are being discriminated against on the basis of their majority ownership by nonresident alien shareholders. A domestic corporation is a "person" entitled to equal protection of the law under U.S.CONST.amend.XIV,§1. Grosjean v. American Press Co., 297 U.S. 233, 244 (1936).

TEX.TAX CODE §23.56 treats certain

of its citizen corporations differently from others, solely on the basis of Federal registration requirements and alien ownership classification.

In WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117 (1968), this Court held that "...while a State may impose conditions on the entry of foreign corporations to do business in the State, once it has permitted them to enter, 'the adopted corporations are entitled to equal protection with the state's own corporate progeny, at least to the extent that their property is entitled to an equally favorable ad valorem tax basis.'" Id at 119. The facts of the present case present a substantially stronger argument for compelling favorable ad valorem tax treatment to Petitioners and for holding TEX.TAX CODE §23.56(3) unconstitutional.

The corporations seeking relief in WHYY were Pennsylvania corporations who had registered and qualified to transact business in New Jersey. The Pennsylvania corporations were denied a non-profit corporation exemption from New Jersey real and personal property taxes solely on the basis that the exemption statute was held to apply only to New Jersey non-profit corporations. Id at 118. This Court noted that this was not a case wherein the exemption was denied due to an inability of the Pennsylvania corporations to benefit New Jersey to the same extent that its own non-profit corporations could; neither did New Jersey distinguish its own non-profit corporations from Pennsylvania's in such a way as to justify the inequitable treatment of the foreign corporations. This

Court concluded that the Pennsylvania corporations were not given equal treatment because New Jersey based its distinction solely on the different residence of the owner. Id at 120.

Petitioners herein are not, unlike the corporations in WHYY, foreign corporations seeking equal treatment with Texas domestic corporations. On the contrary, Petitioners are Texas corporations seeking equal treatment with other Texas corporations. Texas, like New Jersey, is seeking to differentiate between otherwise equal citizen corporations, based solely on the residence of owners of those corporations. If, as held in WHYY, adopted foreign corporations, once permitted to do business in a state, are entitled to equal protection with the state's own corporations,

Texas's own domestic corporations are entitled to equal protection with one another. The State of Texas does not impose any pre-conditions on the formation of Texas corporations by non-resident aliens. Petitioners were incorporated long before the passage of the Texas Tax Code.

Texas has a specific statute guaranteeing aliens equal property rights as a United States citizen. TEX.PROP.CODE ANN. §5.005.

Classifications on the basis of alienage normally command a strict standard of review under U.S.CONST.amend.XIV, §1. Under strict scrutiny, the state must demonstrate that the classification is necessary to achieve a compelling government interest. The Texas Court of Appeals cited the plight of the Texas

farmer as the compelling state interest allowing discrimination. On page 7 of its opinion, (Appendix A, infra, page 18), the Court said that if

> ....nonresident aliens should fail, the owners of the agricultural land would have lost a speculative interest in the land but would not become a burden to the State or national welfare systems.

This rationale fails for two reasons.

First, Petitioners, while possessing a majority of non-resident owners, employ individual Texas citizens who could be out of work as a result of Texas's discriminatory tax treatment. Petitioners as franchised Texas corporate citizens, subject to all state and federal laws, put thousands of dollars of purchase and operating money into the Erath County and Texas economies, and pay all state and federal taxes. Petitioners

are in no sense commanding a mere speculative interest in their land. Such findings are outside the stipulations of evidence and unfounded.

Second, the state's purported compelling interest refutes the face of TEX.CONST.art.VIII,§1-d-1 which authorizes the exemption and states the purpose for same in its initial clause:

> (a) **To promote the preservation of open-space land,** the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes on the basis of its productive capacity.... [Emphasis added].

The purpose of the exemption is to encourage the use and existence of open-space land and includes corporate ownership. It says nothing as to protecting local economies and farmers as suggested by the Texas Court of Appeals, nor with keeping them off welfare rolls,

nor "preserving or benefiting" the family farm. The implication of the Court of Appeals is that Petitioners have some unfair competitive advantage over Texas corporations owned by Texas farmers and ranchers or individual Texas farmers and ranchers. The cases cited by the Court of Appeals were not construing the present Texas Constitution Article VIII, §1-d-1, but a prior article.

Despite the issue of alienage, tax regulation traditionally employs the less stringent rational relationship test as the appropriate standard of review. Madden v. Kentucky, 309 U.S. 83, 88 (1940). Under this test a protestor must establish that the state statute bears no rational relation to any conceivable, legitimate government objective. This was apparently the test used in WHYY.

The Texas courts (ignoring the stated purpose for the open-space agricultural exemption in the Texas constitution) are attempting to justify discrimination against Texas corporate citizens, equal on every other basis except residences of owner majorities, by saying that the "legitimate" government objective lies in protecting individual Texas farmers. It is difficult to understand how a Texas corporation with a majority of ownership by Texas individuals is at so great a disadvantage from a Texas corporation with a majority of ownership by non-resident alien individuals as to compel discriminatory tax treatment. It is self evident that operations of corporate farms and ranches located in Texas cannot be operated by remote control by non-resident shareholders. Each employ indi-

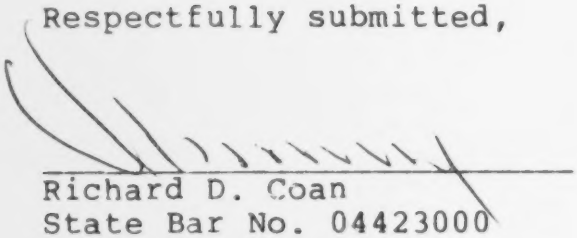
vidual Texas citizens to work the land and maintain day-to-day operations, subject to the same weather conditions, pests, market prices; labor costs, and taxes (except ad valorem), and each have similar effects on local economies whether they survive or fail. Thus, as in WHYY, the rational relationship test fails.

The State promulgated tax rule is arbitrary, discriminatory and unreasonable. It is either protective or punitive to corporate citizens of equal legal status, depending upon a single arbitrary classification relating to the residence of their owners. Under the Fourteenth Amendment, deference to tax regulation should not be allowed to permit suspect classification discrimination and denial of equal protection to these Petitioners.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



Richard D. Coan
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COAN & SHELL, P.C.
188 N. Graham Street
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817/965-5066

ATTORNEY FOR PETITIONERS
Legal Assistant: Carrie McLarty

March 11, 1988

PROOF OF SERVICE

I hereby certify that three (3) copies of the foregoing were served on each Respondent represented in this proceeding by mailing same, certified mail, return receipt requested, to Mr. Brian

Brown, P.O. Box 17428, Austin, Texas 78711 on the 11th day of March, 1988, pursuant to S.Ct. Rule 28.5.

I further certify, pursuant to S.Ct. Rule 28.4(c), as U.S.C. §2403(b) may or may not be applicable, that I have served the Honorable Jim Mattox the Attorney General of the State of Texas three (3) copies of this Petition at State Capitol, Capitol Station, Austin, Texas 78711, by mailing same certified mail, return receipt requested, on above date.

I further certify that I have in like manner and like number re-served each of the foregoing, copies of this reprinted Petition this date by mailing same certified mail, return receipt requested. March 29, 1988.

Richard D. Coan

APPENDIX A

OPINIONS BELOW

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

October 28, 1987

Mr. Richard D. Coan
Coan & Shell, P.C.
188 North Graham
Stephenville TX 76401

Mr. Brian E. Brown
Calame, Linebarger & Graham
P.O. Box 17428
Austin TX 78760

RE: Case No. C-6652

STYLE: ALEXANDER RANCH, INC., AND WENDYLOU RANCH, INC. v. CENTRAL APPRAISAL DISTRICT OF ERATH COUNTY, TEXAS ET AL.

Dear Counsel:

Today, the Supreme Court of Texas refused the above referenced application for writ of error with the notation, No Reversible Error.

Respectfully yours,

Mary M. Wakefield, Clerk

By Blanca E. Morin
Deputy

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

December 16, 1987

Mr. Richard D. Coan
Coan & Shell, P.C.
188 North Graham
Stephenville TX 76401

Mr. Brian E. Brown
Calame, Linebarger & Graham
P.O. Box 17428
Austin TX 78760

RE: Case No. C-6652

STYLE: ALEXANDER RANCH, INC., AND WENDYLOU RANCH, INC. v. CENTRAL APPRAISAL DISTRICT OF ERATH COUNTY, TEXAS ET AL.

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Respectfully yours,

Mary M. Wakefield, Clerk

By Blanca E. Morin
Deputy

11th Court of Appeals

Eastland, Texas

Opinion

Alexander Ranch, Inc. and
Wendylou Ranch, Inc.

Appellants

Vs. No. 11-86-192-CV -- Appeal from Erath County

Central Appraisal District of
Erath County et al

Appellees

The principal issue in this case is whether or not TEX. TAX CODE ANN. sec. 23.56(3) (Vernon 1982) violates the Equal Protection Clause of the fourteenth amendment to the United States Constitution. Section 23.56(3) excludes from appraisal as open-space land real

property owned by a corporation controlled by nonresident aliens.

Alexander Ranch, Inc. and Wendylou Ranch, Inc. filed a petition for review in the district court[1] urging that the Erath County Appraisal Review Board erred in finding that the land which they owned should not be appraised as open-space agricultural land as defined by TEX. TAX CODE ANN. sec. 23.52 (Vernon 1982). The trial court held that the review board properly determined that the land was not eligible to be appraised as open-space land. The landowners appeal. We affirm.

The trial court's ruling was based

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[1]The petition for review was brought against the Erath County Appraisal District and the Erath County Appraisal Review Board as required by TEX. TAX CODE ANN. sec. 42.21 (Vernon Supp. 1987).

upon TEX. TAX CODE ANN. sec. 23.56 (Vernon 1982) which provides in part:

> Land is not eligible for appraisal as provided by this subchapter if:
>
> (2) the land is owned by an individual who is a nonresident alien or by a foreign government if that individual or government is required by federal law or by rule adopted pursuant to federal law to register his ownership or acquisition of that property; or
>
> (3) the land is owned by a corporation, partnership, trust, or other legal entity if the entity is required by federal law or by rule adopted pursuant to federal law to register its ownership or acquisition of that land and a nonresident alien or a foreign government or any combination of nonresident aliens and foreign governments own a majority interest in the entity. (Emphasis added)

The facts were stipulated. The landowners, Alexander and Wendylou, are Texas corporations. Both corporations

are required by federal law to register their ownership of the land in question because nonresident aliens own a majority interest in each corporation. See 7 U.S.C.A. sec. 3501 et seq. (West Supp. 1987). Except for the nonresident alien stockholder limitation in Section 23.56(3), the land meets all the requirements to entitle it to be appraised as open-space land under Section 23.52.

Initially, the taxing authorities argue that the trial court's judgment must be affirmed because the constitutional issue was not properly raised. They cite City of Garland v. Louton, 691 S.W.2d 603 (Tex.1985), and Wichita County v. Robinson, 276 S.W.2d 509 (Tex.1954), to support their position that, when the constitutionality of a statute is raised in a case brought under the Texas

Declaratory Judgments Act, Texas law requires "substantial compliance" with TEX. CIV. PRAC. & REM. CODE ANN. sec. 37.006 (Vernon 1986) which provides for notice to the Attorney General. The Attorney General's office was not notified of this suit.

The landowners did not bring a suit under the Texas Declaratory Judgments Act. See TEX. CIV. PRAC. & REM. CODE ANN. sec. 37.001 et seq. (Vernon 1986). The landowners filed a statutory petition for review as specifically provided for in TEX. TAX CODE ANN. sec. 42.21 (Vernon Supp. 1987).[2] See Brooks v. Bachus, 661 S.W.2d 288 (Tex.App. - Eastland 1983, writ ref'd n.r.e.). This is so even though the landowners state at one point

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[2]The parties stipulated that the landowners fulfilled the "jurisdictional requirements" of TEX. TAX CODE ANN. secs. 41.44, 42.06, 42.08, & 42.21 (Vernon 1982 & Supp. 1987).

in their petition: "Under the laws of the State of Texas and particularly Article 2524-1 et seq. of the Texas Revised Civil Statutes, this Court has jurisdiction to determine questions of construction of statutes...."[3] We hold that, since this was not a suit under the Declaratory Judgments Act, notice to the Attorney General was not required.

The thrust of the landowners' argument on the constitutional questions is that the classification of land ownership under the Texas statute is based on alienage, an inherently suspect classification; therefore, it is subject to close judicial scrutiny. See Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971). If the classification involves a "suspect class," the

---

[3]The Texas Declaratory Judgments Act, before the enactment of the Civil Practice & Remedies Code, was found in TEX.REV.CIV.STAT.ANN. art. 2524-1 et seq.

State must shown that the classification was precisely tailored to serve a compelling governmental interest. Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982). Neither Graham nor Plyler are controlling. Both cases, as well as the other cases cited by the landowners, concern "resident" aliens. The exemption statute under consideration speaks to "nonresident" aliens. who own a majority interest in a corporation.

We think the correct rule was applied by the Supreme Court of Wisconsin in Lehndorff Geneva, Inc. v. Warren, 246 N.W.2d 815 (Wis.1976). There, a Texas corporation whose stock was owned by nonresident aliens brought suit challenging the constitutionality of a Wisconsin statute limiting the amount of land that a corporation could own in

Wisconsin if more than 20 percent of the stock of the corporation was owned by nonresident aliens. The Texas corporation argued that the Court should apply the strict scrutiny standard of review because the classification, based on nonresident alien status, was suspect. The State of Wisconsin argued that the United States Supreme Court decisions do not require strict scrutiny when the classification concerns "nonresident" aliens.

The Wisconsin Supreme Court cited Graham v. Richardson, supra, and pointed out that it is beyond doubt that resident aliens enjoy the "heightened judicial solicitude" of a suspect class. As to resident aliens, the Wisconsin Supreme Court stated:

> In summary, the cases which called for a "heightened judicial solicitude" toward aliens dealt with statutes

> which obstructed the normal affairs of life even though the national government had determined that the aliens in question could live in this country. As residents, these aliens bore the burdens imposed by society but not the sought-after benefits. Nor could they participate in the political process, which is the normal avenue of redress for a citizen unhappy with a governmentally-imposed burden. In this type of situation, the court repeatedly held, "heightened judicial solicitude" is appropriate.

But, as to nonresident aliens, the Court said:

> None of these considerations appears in the instant case, in which foreign nationals who reside outside our borders have voluntarily associated with each other simply to have an investment vehicle here. The duties and burdens shared by the resident alien in common with the citizen entitles him to most of the benefits enjoyed by citizens. But burden sharing, except for payment of taxes in connection with the ownership or development of the land, is lacking in the case of the nonresident aliens in the case before us.

Lehndorff Geneva, Inc. v. Warren, supra at 822.

The Wisconsin Supreme Court, rejecting as do we the argument that nonresident aliens are a suspect class, held:

> We conclude the plaintiffs do not possess the characteristics which warrant heightened judicial solicitude and the state has acted in an area traditionally within its province. Therefore the proper test is found in Simanco v. Dept. of Revenue (1973), 57 Wis.2d 47, 54, 203 N.W.2d 648. Only if a challenger can show that the classification is arbitrary and has no reasonable purpose or relationship to the facts or a justifiable and proper state policy will a legislative classification fall on the grounds of a denial of equal protection.

Lehndorff Geneva, Inc. v. Warren, supra at 824-25. The following cases also distinguish between resident and nonresident aliens when applying the Equal Protection Clause: De Tenorio v.

McGowan, 510 F.2d 92 (5th Cir. 1975), cert. denied, 423 U.S. 877, 96 S.Ct. 150, 46 L.Ed.2d 110 (1975); Alvarez Martinez v. Industrial Commission of State of Utah, 720 P.2d 416 (Utah 1986); and Pedrazza v. Sid Fleming Contractor, Inc., 607 P.2d 597 (N.M.1980).

The classification of nonresident aliens is not an inherently suspect classification and, therefore, does not require strict judicial scrunity.

The United States Supreme Court has long recognized that the States have much discretion where classification for taxation purposes is concerned and has repeatedly held that, where no specific federal right, apart from equal protection, is concerned, the States have a large leeway in distinguishing between classifications. Williams v. Vermont,

471 U.S. ___, 105 S.Ct. ___, 86 L.Ed.2d 11 (1985); Kahn v. Shevin, 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974); Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S.Ct.1001, 35 L.Ed.2d 351 (1973); Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed,2d 480 (1959). The Equal Protection Clause does not impose an iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. Allied Stores of Ohio v. Bowers, supra.

In Allied Stores of Ohio v. Bowers, supra at 358 U.S. 527, the Court stated the standard of review for nonsuspect classifications:

> The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification

> "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation." "If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law." That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy. (Citations omitted)

See also Williams v. Vermont, supra; Lehnhausen v. Lake Shore Auto Parts Co., supra.

TEX. TAX CODE ANN. sec. 23.51 et seq. (Vernon 1982) was enacted pursuant to TEX. CONST. art. VIII, sec. 1-d-1 which provides, in part, that:

> To promote the preservation of open-space land, the legislature shall provide by general law for taxation of open-space land devoted to farm or ranch purposes....The legislature by general law may provide eligibility limitations under this section and may impose sanc-

> tions in furtherance of the taxation policy of this section.

It is apparent that the purpose of the open-space exemption in Section 23.51 et seq. is to preserve and benefit the family farm. See Gragg v. Cayuga Independent School District, 539 S.W.2d 861 (Tex.1976); San Marcos Consolidated Independent School District v. Nance, 495 S.W.2d 335 (Tex.Civ.App. - Austin), writ ref'd n.r.e. per curiam, 502 S.W.2d 694 (1973).

In Gragg v. Cayuga Independent School District, supra at 865 n. 2, the Court observed that the Texas Legislative Council, while analyzing a prior constitutional amendment dealing with the taxing of land used for agricultural purposes, stated:

> Family farming is a wholesome occupation but is often a risky or marginal business. Any extra burden

> placed on the family farmers threatens to drive thousands off the land and onto the unemployment and welfare rolls. When the city approaches the farm, the tax burden to the farmer often becomes prohibitive. An equitable tax adjustment, such as the one proposed by this amendment will help to preserve the family farm.

The Court in Gragg v. Cayuga Independent School District, supra at 865, said:

> For the first one hundred years of its existence, Texas was largely a rural State. By 1965, increased urbanization had caused increased market values on agricultural lands near metropolitan areas due to industrial expansion, residential subdivisions, and speculative buying. Payment of taxes on market value as required by the Constitution of 1876 was discouraging farmers and ranchers from continuing their agricultural uses and was in some instances forcing sales and loss of both land and personnel from the essential business of producing food and fiber. See the Texas Legislative Council Report cited in note 2 and Report to the 62nd Legislature of the Agricultural Land Assessment Study Committee

under H.C.R. 8, 61st Leg., Reg. Session.

A reasonable distinction can be made between residents, whether citizens or aliens, and nonresident aliens. If the farm or ranch owned or controlled by residents should fail because of excessive taxation of agricultural land, these residents would have lost their means of income. There would be, as observed by the Texas Legislative Council, thousands joining the ranks of the unemployed and welfare rolls. If, however, farms or ranches owned by nonresident aliens or corporations controlled by nonresident aliens should fail, the owners of the agricultural land would have lost a speculative interest in the land but would not become a burden to the State or national welfare systems. The classification

contained in Section 23.56(3) rests upon differences having a fair and substantial relation to the object of the legislation; this classification does not violate the Equal Protection Clause. Allied Stores of Ohio v. Bowers, supra.

The landowners also argue that the trial court erred in holding that TEX. PROP. CODE ANN. sec. 5.005 (Vernon 1984) and TEX. TAX CODE ANN. sec. 23.56(3) (Vernon 1982) are not in irreconcilable conflict. They contend that under proper code construction pursuant to TEX. GOV'T CODE ANN. sec. 311.026 (Vernon Pamph. 1987), Section 5.005 should prevail.

Section 5.005 provides:

> An alien has the same real and personal property rights as a United States citizen.

TEX. GOV'T CODE ANN. sec. 311.026 states:

> (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.
>
> (b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. (Emphasis added)

Section 5.005 of the Property Code is a broad, general provision. Section 23.56 of the Tax Code is a specific, special provision. The Property Code, containing Section 5.005, became effective on January 1, 1984. The Tax Code, containing Section 23.56, became effective January 1, 1981. The landowners contend that the later code, the Property Code, should prevail. We disagree.

First, we note that both the Tax Code and the Property Code were enacted as nonsubstantive revisions of existing statutes. See Property Code, ch. 576, 1983 TEX. GEN. LAWS 3475; Tax Code, ch. 389, 1981 TEX. GEN. LAWS 1490. We hold that the codification dates of the respective codes do not control. The enactment dates of the specific statutes, now contained in the codes, are the controlling dates.

Section 5.005 of the Property Code was formerly TEX.REV.CIV.STAT.ANN. art. 166a (1965)(repealed 1984) which became effective August 30, 1965. Section 23.56 of the Tax Code was formerly TEX.REV.CIV.STAT.ANN. art. 7174A, sec. 6 (1979)(repealed 1982) which became effective May 31, 1979. See 1965 TEX. GEN. LAWS 1463; 1979 TEX. GEN. LAWS 680.

Therefore, Article 7174A was enacted later than Article 166a. Furthermore, even if the general provision of Section 5.005 is the later enactment, we hold that it is not the "manifest intent" that Section 5.005 should prevail over the specific special provision of Section 23.56.

The judgment of the trial court is affirmed.

Austin McCloud

AUSTIN McCLOUD

CHIEF JUSTICE

May 21, 1987

Publish. See TEX.R.APP.P. 90.

NO. 16,245

ALEXANDER RANCH,	§	IN THE DISTRICT
INC. AND WENDYLOU	§	COURT
RANCH, INC.	§	
	§	
VS	§	ERATH COUNTY, TEXAS
	§	
CENTRAL APPRAISAL	§	
DISTRICT OF ERATH	§	266TH JUDICIAL
COUNTY, ET AL	§	DISTRICT

FINAL JUDGMENT

On the 1st day of April, 1986, came on to be heard the above-entitled and numbered cause and Plaintiffs and Defendants appeared by their attorneys of record and announced ready for trial, and no jury having been demanded, all matters of fact and things in contro-

versy were submitted to the Court.

The Court after hearing the evidence and arguments of counsel is of the opinion that Plaintiffs' lands which are the subject of this suit do not qualify as open-space agricultural land under the provisions of Chapter 23, Subchapter D, Texas Property Tax Code for the 1983 tax year and that Section 23.56(3), Property Tax Code is constitutional.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiffs' lands which are the subject of this suit do not qualify as open-space agricultural land for the 1983 tax year and instead the properties shall be subject to taxation based upon their market value as already determined by Defendants.

All costs of Court expended or

incurred in this cause are hereby adjudged against Alexander Ranch, Inc. and Wendylou Ranch, Inc., Plaintiffs. All writs and processes for the enforcement and collection of the costs of court may issue as necessary. All other relief not expressly granted herein is denied.

Signed this 27th day of June, 1986.

Donald Jones
JUDGE PRESIDING

NO. 87-1626

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALEXANDER RANCH, INC.

and

WENDYLOU RANCH, INC.,

Petitioners

v.

CENTRAL APPRAISAL DISTRICT OF ERATH, COUNTY, TEXAS, ERATH COUNTY APPRAISAL REVIEW BOARD and JAMES BACCUS,

Respondents

Supreme Court, U.S.
FILED
APR 26 1988
JOSEPH F. SPANIOL, JR.
CLERK

PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF TEXAS

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the denial of an open-space agricultural tax exemption, pursuant to TEX. TAX CODE Section 23.56(3) (Vernon, 1982), to lands owned by Petitioners, who are Texas Corporations, on the basis of classification of nonresident alien ownership, is violative of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution?

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SUMMARY OF ARGUMENT

Petitioners' writ should be denied because the statute in question does not violate the Equal Protection Clause of the Sixteenth Amendment to the United States Constitution.

REASONS FOR DENYING WRIT

Central to the argument of the Petitioners is that the classification created by TEX. TAX CODE Section 23.56 affects a suspect classification which requires a strict standard of review. (Petition, Page 15ff). The classification involved is not one involving a suspect class. Petitioners' error in this regard is due to the false statement that the classification in question is simply alienage. The classification involved is nonresident alienage. A classification based on nonresident alienage has never been held to a standard of strict scrutiny. Only classifications concerning resident-aliens have been ruled to be suspect.

Because a suspect classification is not involved the appropriate standard of review is the rational relation test. In addition, because

this is a tax statute the Texas Legislature is entitled to board discretion. Madden v. Kentucky, 60 S. Ct. 406, 408 (1939) and Lehnhausen v. Lake Shore Auto Parts Co., 93 S. Ct. 1001, 1003-1004 (1973); and Kahn v. Shevin, 94 S. Ct. 1734, 1737 (1974). Under the established criteria the statute in question is constitutional if the classification is fair and reasonably related to the object of the legislation. The Texas Court of Appeals has ruled that the purpose of the agricultural land exemption involved is to preserve and benefit the family farmer. (Petitioners' Appendix A, Page 16). Consequently, it is virtually self-evident that a classification aimed at denying this exemption to owners who are non-resident aliens is consistent with the legislative purpose. As the Texas Court of Appeals said in its decision of this matter:

> A reasonable distinction can be made between residents, whether citizens or aliens, and nonresident aliens. If the farm or ranch owned or controlled by residents should fail because of excessive taxation of agricultural land, these residents would have lost their means of income. There would be, as observed by the Texas Legislative Council, thousands joining the ranks of the unemployed and welfare rolls. If, however, farms or ranches owned by nonresident aliens or corporations controlled by nonresident aliens should fail, the owners of the agricultural land would have lost a speculative interest in the land but would not become a burden to the State or national welfare systems. The classification contained in Section 23.56 (3) rests upon differences having a fair and substantial relation to the object of the legislation; this classification does not violate the Equal Protection Clause. (Petitioners' Appendix A, Pages 18-19).

A substantial relation to the object of the legislation having been found by the Texas Courts, the key test for constitutionality is

established in favor of the statute in question.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be denied.

Respectfully submitted,

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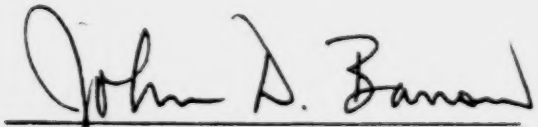
ATTORNEY FOR
RESPONDENTS

May 2, 1988

PROOF OF SERVICE

I hereby certify that three (3) copies of the foregoing were served on both Petitioners represented in this proceeding by mailing same, certified mail, return receipt requested, to Richard D. Coan, 138 N. Graham Street, Stephenville, Texas 76401 on the 2nd day of May, 1988, pursuant to S. Ct. Rule 28.

I further certify, pursuant to S. Ct. Rule 28.4(c), as U.S.C. Section 2403(b) may or may not be applicable, that I have served the Honorable Jim Mattox the Attorney General of the State of Texas three (3) copies of this Petition at State Capitol, Capitol Station, Austin, Texas 78711, by mailing same certified mail, return receipt requested, on above date.



JOHN D. BARROW